

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

All MDL cases

Case No. 1:17-MD-2804

Hon. Dan A. Polster

**PHARMACY DEFENDANTS' SECOND STATUS REPORT
ON ZERO MARKET SHARE DISMISSALS**

Pursuant to this Court's Order of April 9, 2021, Dkt. 3688 at 2, directing that Pharmacy Defendants¹ "identify for plaintiffs those cases where they have zero-percent market share in the relevant jurisdictions" and that Plaintiffs "begin dismissal of those Defendants with prejudice," counsel for Pharmacy Defendants provide the following status report. Pursuant to that same order, Pharmacy Defendants previously submitted a report on April 30, 2021. Dkt. 3709.

CVS: On April 19, 2021, CVS identified to the PEC 383 cases filed in jurisdictions in which it has zero market share. To this date, the plaintiff in 1 of those cases has dismissed its claims against CVS with prejudice, and plaintiffs in 32 of those cases have indicated that they are still considering their positions. Plaintiffs in the remaining 350 cases have taken no action in response to the Court's order as far as CVS is aware.

Rite Aid: On April 5, 2021, Rite Aid identified to the PEC 507 cases filed in jurisdictions in which it has zero market share. To date, plaintiffs in 1 of those cases have dismissed their claims

¹ The four "Pharmacy Defendants" are CVS Pharmacy, Inc. and its subsidiaries ("CVS"), Rite Aid of Maryland, Inc., d/b/a Mid-Atlantic Customer Support Center, Rite Aid of Ohio, Inc., and Rite Aid Hdqtrs. Corp. ("Rite Aid"), Walgreens Boots Alliance, Inc., Walgreen Co., and Walgreen Eastern Co. ("Walgreens"), and Walmart Inc. ("Walmart").

against Rite Aid with prejudice, plaintiffs in 8 of those cases have dismissed their claims against Rite Aid without prejudice, and plaintiffs in 1 of those cases have indicated that they are still considering their positions. Plaintiffs in the remaining 497 cases have taken no action in response to the Court's order as far as Rite Aid is aware.

Walgreens: On April 13, 2021, Walgreens identified to the PEC 434 cases filed in jurisdictions in which it has zero market share in ARCOS. To date, plaintiffs in 3 of those cases have dismissed their claims against Walgreens with prejudice (or indicated that they plan to), plaintiffs in 4 of those cases have dismissed their claims against Walgreens without prejudice,² plaintiffs in 8 of those cases have indicated that they refuse to dismiss their claims against Walgreens, and plaintiffs in 44 of those cases have indicated that they are still considering their positions. Plaintiffs in the remaining 357 cases have taken no action in response to the Court's order as far as Walgreens is aware.

Walmart: On April 16, 2021, Walmart identified to the PEC 535 cases filed in jurisdictions in which it has zero market share in ARCOS and 47 cases where it requested additional information regarding the plaintiff's jurisdiction because Walmart was unable to confirm the existence of its market share in ARCOS. To date, plaintiffs in 2 of those cases have dismissed their claims against Walmart with prejudice, plaintiffs in 1 of those cases dismissed Walmart without prejudice,³ counsel for plaintiffs in 38 of those cases have indicated that they plan to dismiss Walmart from 36 of those cases and asked for additional information for 2 of

² Plaintiffs in 20 cases had previously dismissed Walgreens without prejudice by omitting them from their short-form amended complaints. These dismissals without prejudice are not reflected on the MDL docket and Walgreens will provide this information to the PEC.

³ Plaintiffs in 18 cases had previously dismissed Walmart without prejudice by omitting them from their short-form amended complaints. These dismissals without prejudice are not reflected on the MDL docket and Walmart will provide this information to the PEC.

those cases. Plaintiffs in the remaining 541 cases have taken no action in response to the Court's order as far as Walmart is aware.⁴

DATED: June 1, 2021

Respectfully submitted,

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/s/ Kelly A. Moore

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⁴ Pharmacy Defendants understand that other MDL defendant pharmacies have also identified zero market share cases to the PEC and received the following responses:

- On April 30, 2021, **Albertsons** identified to the PEC 15 cases filed in jurisdictions in which it has zero market share. To date, plaintiffs in the 15 cases have taken no action in response to the Court's order as far as Albertsons is aware.
- On April 22, 2021, **H-E-B, LP** identified to the PEC 1 case filed in jurisdictions in which it has zero market share. Plaintiffs have indicated that they refuse to dismiss their claims against H-E-B, LP.
- On April 15, 2021, **Giant Eagle** identified to the PEC 1 case filed in jurisdictions in which it has zero market share. To date, plaintiffs have not dismissed their claims against Giant Eagle.
- On April 29, 2021, **Kroger** identified to the PEC 274 cases filed in jurisdictions in which it has zero market share. To date, plaintiffs in the 274 cases have taken no action in response to the Court's order as far as Kroger is aware.
- On April 27, 2021, **Publix** identified to the PEC 4 cases filed in jurisdictions in which it has zero market share. To date, plaintiffs in the 4 cases have taken no action in response to the Court's order as far as Publix is aware.

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